

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3047 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JANAKRAI K CHAVDA

Versus

COMMISSIONER

Appearance:

MR YV SHAH for Petitioners
MR JR NANAVATI for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 23/06/2000

ORAL JUDGEMENT

By this petition, under Article 226 of the Constitution of India, the petitioners have challenged the transfer orders passed by respondent No.1, Commissioner, Bhavnagar Municipal Corporation, in favour of respondent No.2,

Suresh P. Patel by the order dated 13.5.88 and in favour of respondent No.3, Naval Mehta, by the order dated 31.3.86, from the office of the Sanitary Inspector in Health Branch to Shop Inspector in the Shop Inspector branch of the Corporation, at Bhavnagar, on the terms and conditions contained in the impugned orders as at, Annexure C, inter alia, contending that such transfers, ignoring the claim of the petitioners will, adversely, affect their legitimate claim for promotion.

Petitioner No.1, Mr Chavda, had been recruited as daily wage Junior Clerk on 6.2.1965 and was confirmed with effect from 5.3.70 as Junior Clerk. He has passed B.A. and Local Self Government Diploma (LSGD) examinations. He had been posted as Checker in the bus Traffic Department on 26.6.81, which according to him was of an independent charge. Thereafter, he was posted as Senior Clerk in the Bus Traffic Department on 5.8.83. Subsequently, he had been given independent charge of Octroi Inspector. The petitioner No.1, thereafter, came to be promoted as Senior Clerk in the pay scale of Rs.330-560 with effect from 11.5.87. The pay scale of Sanitary, Shop and Octroi Inspectors, is Rs.425-800, at the relevant time. The petitioners have also contended that the qualifications prescribed under the Rules for the post of Inspector other than Sanitary Inspectors is 'Graduate' from any recognised University. The avenue of promotion from the post of Junior Clerk is to the post of Senior Clerk and from Senior Clerk to Head Clerk. The petitioner No.1 is senior to respondent Nos.2 & 3 and his name was shown at Serial No.1 of the Graduate Junior Clerks' seniority list dated 1.3.85 and, therefore, he is eligible to be considered for promotion to the post of Inspector or Head Clerk in preference to his juniors.

In so far as petitioner No.2 is concerned, he came to be, initially, appointed as daily wage Junior Clerk on 3.10.67 and came to be confirmed as Junior Clerk on 17.10.70. He has also passed BA examination in 1967 and has also passed LSGD examination in 1983. It is his contention that he is senior to respondent Nos.2 & 3 and his name was shown at Serial No.2 of the Graduate Junior Clerks' seniority list, dated 1.3.85 and he is eligible to be considered for promotion to the post of Shop Inspector in the grade of Rs.425-800 in preference to respondent No.3. The petitioner No.2 had earlier filed Special Civil Application No.268/84 when one Bachubhai Dudabhai, SSC, Clerk, who was junior and unqualified for the post of Inspector was promoted neglecting the claim of the petitioner and his petition came to be allowed. A copy of the decision is also placed on record.

Whereas, petitioner No.3, Upendra T. Trivedi, has inter alia, contended that he had been, initially, recruited as daily wage Junior Clerk on 7.5.1967 and came to be confirmed as Junior Clerk on 16.10.70. He has also passed BA and LSGD examinations. He has contended that he has not been given any promotion either as Senior Clerk, Head Clerk or Inspector though he is eligible to be promoted as Senior Clerk, Head Clerk or Inspector. He was given independent charge of Tax Inspector on 7.4.86 and thereafter as Sub-Inspector and thereafter, as Encroachment Inspector and only 20 per cent allowance had been paid. The petitioner No.3 was also entrusted with the work of recoveries of taxes and he had been given only 20 per cent charge allowance. According to petitioner No.3, he is senior to respondent Nos.2 & 3. He has stated that he has been shown at serial No.3 of the Graduate Junior Clerk seniority list dated 1.3.85.

Petitioner No.4, Mr Gohel, belongs to S.T. category and he had been, initially, recruited as daily wage Junior Clerk on 28.1.75 and came to be confirmed on 1.7.78. He has also passed BA as well as LSGD examinations. It is also stated by him that he has passed first LL.B winter semester examination. It is his contention that he is eligible to be considered for promotion as Shop Inspector grade Rs.425-800 in preference to respondent No.3.

The petitioners had filed representations to the respondent Corporation to consider them for promotion as Shop Inspector, but the same have been neglected, as alleged by them.

The petitioners have raised common contention that respondent No.2, Mr Patel, had been directly recruited as Sanitary Inspector, in the pay scale of Rs.425-800 on 1.2.78 in the Health Department of the respondent Corporation and he is eligible to be considered for promotion for the post of Chief Sanitary Inspector. He is now transferred as Shop Inspector under the impugned order dated 13.5.88. It is the common contention that respondent No.2 has been transferred out of the Department to get accelerated promotion as Head Clerk, Office Superintendent, House Tax Superintendent, Octroi Superintendent grade Rs.500-900 ignoring the qualified senior most and experienced petitioners.

Again, the common contention of the petitioners is that respondent No.3, Mr Mehta, initially was recruited as Junior Clerk on 1.8.70 and he has passed B.A. and LSGD examinations and was deputed for training as Sanitary

Inspector, and thereafter, he has been promoted as Sanitary Inspector in the pay scale of Rs.425-800 with effect from 18.4.83 and it is alleged that with a view to give him further favourable promotion, he has been transferred as Shop Inspector on 31.3.1986.

Again, the petitioners have also averred that a separate seniority list for the post of Sanitary Inspectors are maintained and a separate seniority list of other Inspectors, such as Shop, Octroi, Tax Inspectors are also maintained. A Sanitary Inspector can get promotion as Chief Sanitary Inspector in the same Health Department, while other Inspectors can get promotion either as Office/Octroi or House Tax Superintendent in the pay scale of Rs.500-930. The petitioners have also stated that eligible, qualified and experienced Junior Clerks should have been considered for promotion as Shop Inspector, Octroi Inspector, Tax Inspector in the pay scale of Rs.425-800 from the common seniority list of Junior Clerks maintained by the Corporation in view of the settlement under the provisions of the Industrial Disputes Act, 1947 and undue benefits of further promotion channel given to respondents Nos.2 & 3 should be quashed and set aside. The common contention of the petitioners is that by such promotion given to respondent Nos.2 & 3 by transferring them as Shop Inspectors, the future chances of promotion of the petitioners have been marred.

The claim of the petitioners is countered by the respondents. Respondent No.1 Corporation has filed affidavit in reply of the Chief Personnel Officer of the Corporation, whereas, respondent Nos.2 & 3 have supported the Corporation and, thus, they have opposed the claim of the petitioners raised in the petition. Affidavit in rejoinder is also filed by petitioner Mr.Chavda. Learned advocate appearing for the parties have also been heard. Documentary evidence placed on record in support of the rival contentions have also been examined, threadbare.

The respondent No.2, Mr Patel, who was working as Sanitary Inspector has been transferred to the equivalent post of Shop Inspector by virtue of the impugned order dated 13th May, 1988, on the terms and conditions incorporated in the impugned order. Petitioners are not holding the post of Inspectors. Petitioner No.1, Mr Chavda, was given charge of Senior Clerk and was also given charge of Inspector in the Octroi Department. Holding temporary charge of a post does not mean that the persons is holding the post. Temporary charge of post

Inspector given was for a short period and was thereafter taken away. The petitioner No.1 has been promoted as Senior Clerk on temporary basis with effect from 1st May, 1987. Nothing has been shown that petitioner No.1 working as Senior Clerk in the Octroi Department could be transferred as Shop Inspector as the post of Senior Clerk is not equivalent to the post of Shop Inspector. Again, the order of transfer from one branch to another and from department to another in absence of any malafide cannot be permitted to be questioned in a writ petition under Article 226 of the Constitution of India. Similarly, petitioner No.2, Mr. Joshi, is a Junior Clerk and he is not eligible to be transferred to the post of Shop Inspector. Respondent No.2, Mr. Patel, has been transferred on an equivalent post and, therefore, petitioner No.2 cannot make grievance on the basis of the seniority in the cadre of Junior Clerk. It is stated by the respondent that petitioner No.2 had been prosecuted by filing Criminal Case No.66/83 in the Court of Chief Judicial Magistrate, Bhavnagar and still the case is pending. The criminal case had been lodged against him in respect of misappropriation of money by fabricating false receipt books. It is true that petitioner No.3, Mr.Trivedi, was given charge of Tax Inspector on 7th April, 1986. However, the Standing Committee by its resolution dated 15.5.86, had abolished the said post and therefore, the charge given to petitioner No.3, ended. It is not successfully shown that petitioner No.3 had worked as Encroachment Inspector as contended by him. He was also given charge of Vigilance Inspector. However, since the work of petitioner No.3 had not been satisfactory, the charge had been taken away. It is the contention of the respondent that petitioner No.3, Mr Trivedi, was fined Rs.250/- for misconduct by the Municipal Commissioner. However, it is also stated that the penalty was cancelled upon request of the petitioner No.3 by the Municipal Commissioner, at the relevant time and instead, warning was administered. Petitioner No.3 is not holding the post of Inspector and, obviously, therefore, he cannot claim that he should be transferred to the post of Shop Inspector.

In case of petitioner No.4, Mr.Gohel, it may be stated that he is in the cadre of Junior Clerk and in the seniority list of the Junior Clerks, he was shown at serial No.137 as per the contention raised by the respondent Corporation. He is also not senior in the reserved category. He is also not holding the post of Inspector. Therefore, there is no question of his getting transferred to the post of Inspector in preference to respondent Nos.2 & 3.

It is spelt out from the record that respondent No.2 is holding the post of Sanitary Inspector and he has been transferred to the post of Shop Inspector, which is an equivalent post. Nothing has been shown that such a transfer is against the public policy. It is not shown that respondent No.2 has been transferred out of Department so as to earn accelerated promotion as alleged by the petitioners.

The petitioners have challenged the impugned orders of transfer of respondent Nos.2 & 3 in the cadre of Shop Inspectors. The cadre of Sanitary Inspector and the Shop Inspector is equivalent, carrying same pay scale. Respondent No.3 was appointed as Sanitary Inspector on 18th April 1983 and since, he was holding the post of Sanitary Inspector, who has, now, by virtue of the impugned order, came to be transferred to the post of Shop Inspector, which is equivalent to the post of Sanitary Inspector.

The respondents have, clearly, stated that a common seniority list of Shop Inspectors, Octroi Inspectors, Sanitary Inspectors, House Tax Inspectors, Bus Inspectors and other Inspectors has been prepared on 1.4.86. The promotion is given from the post of Junior Clerk to the post of Senior Clerk and Head Clerk only. Obviously, therefore, the petitioners could not be said to be eligible for the post of Shop Inspector and, consequently, there would not arise the question of considering their case of transfer to the post of Shop Inspector.

From the post of Junior Clerk, promotion is given to the post of Senior Clerk and, in turn, from Senior Clerk to the post of Sub-Inspector or Head Clerk. From the post of Sub-Inspector, promotion could be given to the post of Inspector and further promotion can be given to the post of Superintendent. The petitioners, as such, have failed to show that they are entitled to be considered for even transfer in the cadre of Inspectors. They are holding the post in the lower cadre and, therefore, they cannot claim right to be transferred to the post of Shop Inspector. With the result, the contention that the respondents Nos.2 & 3 have been transferred to the post of Shop Inspector by disregarding the seniority, qualification and experience of the petitioners is found to be unjustified, unacceptable and unsustainable.

The petitioners have not been able to show that they are entitled to the said post first and even if they succeed

in showing so, they will have to show that they are entitled to be transferred to the post of Shop Inspector as of right.

After having taken into consideration the relevant facts and circumstances, the proposition of law and the relevant rules, the petitioners have failed to show that they are entitled to the post of Shop Inspector and that the impugned orders transferring the respondents Nos.2 & 3 by the respondent No.1 Corporation from the post of Sanitary Inspector to the post of Shop Inspector, are in any way unjust, unreasonable or violative of the provisions of Article 14 of the Constitution of India or any other statutory rights. The petition is, therefore, meritless and is required to be dismissed.

In the result, the petition is dismissed. Rule discharged. Considering the facts and circumstances, without any order as to costs.

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(vjn)